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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/549,036	04/13/2000	Gregory A Farrell	MST-2322.1	7845

7590

12/02/2003

Andrew L. Klawitter  
Bayer Corporation  
511 Benedict Avenue  
Tarrytown, NY 10591

EXAMINER

HANDY, DWAYNE K

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 12/02/2003

14

Please find below and/or attached an Office communication concerning this application or proceeding.

## Notice of Abandonment

Application No.

09/549,036

Examiner

Dwayne K Handy

Applicant(s)

FARRELL, GREGORY A

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:


1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 13 March 2003.
  - (a) ☐ A reply was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply (including a total extension of time of \_\_\_\_\_ month(s)) which expired on \_\_\_\_\_.
  - (b) ☐ A proposed reply was received on \_\_\_\_\_, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.  
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
  - (c) ☒ A reply was received on 15 September 2003 but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
  - (d) ☐ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
  - (a) ☐ The issue fee and publication fee, if applicable, was received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
  - (b) ☐ The submitted fee of \$\_\_\_\_\_ is insufficient. A balance of \$\_\_\_\_\_ is due.  
The issue fee required by 37 CFR 1.18 is \$\_\_\_\_\_. The publication fee, if required by 37 CFR 1.18(d), is \$\_\_\_\_\_.
  - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
  - (a) ☐ Proposed corrected drawings were received on \_\_\_\_\_ (with a Certificate of Mailing or Transmission dated \_\_\_\_\_), which is after the expiration of the period for reply.
  - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on \_\_\_\_\_ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☒ The reason(s) below:

See Continuation Sheet

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

Item 7 - Other reasons for holding abandonment: As per the attached memo, CPA practice was discontinued on July 14, 2003. Also, CPA's were never permitted in applications filed after May 29, 2000. The request for a Continued Process Application is being treated as a Request for Continued Examination (RCE) which is also improper (see attachment). As such, the period for response continues to run from the date of the final rejection, which statutory period has expired.

Attachments: PTO-2051 and Memorandum dated 7/1/03

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700



Commissioner for Patents  
United States Patent and Trademark Office

P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

APPLICATION NUMBER FILING DATE

FIRST NAMED APPLICANT

ATTY. DOCKET NO./TITLE

DATE MAILED:

**NOTICE OF IMPROPER REQUEST FOR CONTINUED EXAMINATION (RCE)**

The request for continued examination (RCE) under 37 CFR 1.114 filed on 9/15/03 is improper for reason(s) indicated below:

- ☐ 1. Continued examination under 37 CFR 1.114 does not apply to an application for a design patent. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b) or a CPA under 37 CFR 1.53(d). An RCE cannot be treated as a CPA.
- ☐ 2. Continued examination under 37 CFR 1.114 does not apply to an application that was filed before June 8, 1995. Applicant may wish to consider filing a continuing application under 37 CFR 1.53(b).
- ☒ 3. Continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111. If the RCE was not accompanied by a reply, the time period set forth in the last Office action continues to run from the mailing date of that action.
- ☐ 4. The request was not filed before payment of the issue fee, and no petition under 37 CFR 1.313 was granted. If this application has not yet issued as a patent, applicant may wish to consider filing either a petition under 37 CFR 1.313 to withdraw this application from issue, or a continuing application under 37 CFR 1.53(b).
- ☐ 5. The request was not filed before abandonment of the application. The application was abandoned, or proceedings terminated on \_\_\_\_\_. Applicant may wish to consider filing a petition under 37 CFR 1.137 to revive this abandoned application.
- ☐ 6. The request was not accompanied by the fee set forth in 37 CFR 1.17(e) as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.
- ☒ 7. The request was not accompanied by a submission as required by 37 CFR 1.114. Since the application is not under appeal, the time period set forth in the final Office action or notice of allowance continues to run from the mailing date of that action or notice.

**Note:** A continued prosecution application (CPA) under 37 CFR 1.53(d) cannot be filed in a utility or plant application. A CPA filed in a utility or plant application that has a filing date **on or after June 8, 1995** will be treated as an RCE under 37 CFR 1.114. The request for a CPA in the instant application, however, has been treated as an improper RCE for the reason(s) indicated above.

***A copy of this notice MUST be returned with any reply.***

Direct the reply and any questions concerning this notice to:

Jill Warden, Technology Center 1700

(703) 30 8 - 4037



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
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DATE MAILED:

**Notice of Improper CPA (or FWC) Filing  
For Utility or Plant Applications Filed Before June 8, 1995  
No Filing Date Granted**

Applicant filed a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) (or a file wrapper continuing (FWC) application under 37 CFR 1.62) on Sept. 15, 2003 in the above-identified application which is a utility or plant application filed before June 8, 1995. Effective July 14, 2003, CPA Practice under 37 CFR 1.53(d) is no longer available for utility and plant applications. See *Elimination of Continued Prosecution Application Practice as to Utility and Plant Patent Applications*, Final Rule, 68 Fed. Reg. 32376 (May 30, 2003). FWC practice also has been eliminated as of December 1, 1997. See 1203 O.G. 63 (October 21, 1997).

The time period for reply set in the last Office action (or notice) of the application in which the improper CPA (or FWC) is filed (hereafter "prior application") continues to run from the mailing date of the Office action or notice. Applicant may wish to file a continuing application under 37 CFR 1.53(b). If, however, the prior application is abandoned (e.g., the time period for reply has expired), applicant would need to file a petition to revive the prior application to establish copendency with the continuing application under 37 CFR 1.53(b).

Any petition to revive under 37 CFR 1.137 should be directed to the attention of the Office of Petitions and may be addressed to: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Alternatively, if no application is desired, applicant may file a request for refund of any CPA (or FWC) filing fee paid (less the handling fee set forth in 37 CFR 1.21(n)).

**A copy of this notice MUST be returned with the reply.**

Direct the reply and any questions concerning this notice to

Jill Warden, Technology Center 1700  
(703) 308-4037



## MEMORANDUM

DATE: July 1, 2003

TO: Patent Examining Corps

FROM: Stephen G. Kunin  
Deputy Commissioner for Patent Examination Policy

SUBJECT: Elimination of Continued Prosecution Application (CPA) Practice  
as to Utility and Plant Applications

**Effective July 14, 2003, CPA practice will be eliminated as to utility and plant applications. See *Elimination of Continued Prosecution Application Practice as to Utility and Plant Patent Applications*, 68 Fed. Reg. 32376 (May 30, 2003), 1271 Off. Gaz. Pat. Office 143 (June 24, 2003) (final rule). As of July 14, 2003, CPAs can only be filed in design applications. Any request for a CPA filed on or after July 14, 2003, in a utility or plant application is improper, regardless of the filing date of the utility or plant application in which the CPA is filed.**

### **I. CPAs filed in utility and plant applications filed on or after June 8, 1995**

If the utility or plant application has a filing date on or after June 8, 1995, the improper CPA filed on or after July 14, 2003 will be treated as a request for continued examination (RCE) under 37 CFR 1.114 (note: RCEs can only be filed in utility or plant applications filed on or after June 8, 1995). If the improper CPA does not satisfy the requirements of 37 CFR 1.114 (e.g., the request lacks a submission or the fee set forth in 37 CFR 1.17(e), or the prosecution of the application is not closed), the Office will treat the improper CPA as an improper RCE, and the time period set in the last Office action (or notice) will continue to run. The Office will send applicant a Notice of Improper Request for Continued Examination (RCE), PTO-2051 (Rev. 7/03 or later). If the time period for reply to the last Office action (or notice) has expired, the application is abandoned and the applicant must file a petition under 37 CFR 1.137 and the required petition fee, accompanied by a submission as defined by 37 CFR 1.114(c) and the fee set forth in 37 CFR 1.17(e), unless previously filed, to revive the abandoned application.

### **II. CPAs filed in utility and plant applications filed before June 8, 1995**

If the improper CPA filed on or after July 14, 2003, is filed in a utility or plant application that has a filing date before June 8, 1995 (the application is not eligible for the RCE practice), the Office will mail a Notice of Improper CPA (or FWC) Filing For Utility or Plant Applications Filed Before June 8, 1995, PTO-2011 (Rev. 7/03), to notify the applicant of the improper CPA. The time period for reply set in the last Office action (or notice) will continue to run. If the time period for reply has expired, the application is abandoned. Applicant may file a continuing application under 37 CFR 1.53(b). If, however, the application in which the improper CPA is

filed is abandoned, applicant would need to file a petition to revive the prior application to establish copendency with the continuing application under 37 CFR 1.53(b).

### III. Improper CPAs will not be converted to applications under 37 CFR 1.53(b) without extenuating circumstances

During the implementation of RCE practice, the Office indicated that if an applicant files a request for a CPA of an application to which CPA practice no longer applies and the applicant does not want the CPA request to be treated as an RCE, applicant may file a petition under 37 CFR 1.53(e) requesting that the improper CPA be converted to an application under 37 CFR 1.53(b). With the elimination of CPA practice as to utility and plant applications, the Office will no longer convert an improper CPA into an application under 37 CFR 1.53(b) simply because it is requested by the applicant. The Office will now convert an improper CPA into an application under 37 CFR 1.53(b) only if the applicant shows that there are extenuating circumstances that warrant the burdensome process of converting a CPA into an application under 37 CFR 1.53(b). For example, if the application has issued as a patent, it may be considered as an extenuating circumstance because restoring the application to pending status would not be possible.

### IV. Revised Forms and Notices

The following forms and notices have been revised in accordance with the rule changes. The revised notices (Rev. 7/03 or later) should be used for CPAs filed on or after July 14, 2003.

Form Number	Title of the Form	Revision	Usage
PTO-2011 Rev. 7/03	Notice of Improper CPA (or FWC) Filing For Utility or Plant Applications Filed Before June 8, 1995	This form has been revised to provide that a CPA or a FWC is improper if it was filed in a utility or plant application with a filing date before 6/8/95.	LIEs should mail this form to applicants if a CPA or FWC is filed in a utility or plant application with a filing date before 6/8/95 and no prior CPA was filed.
PTO-2012 Rev. 7/03	Notice of Improper CPA For Design Applications	This form has been revised to be applicable only to design CPAs.	LIEs should mail this form to applicants if a design CPA is improper (e.g., the design CPA was not filed before the payment of the issue fee).
PTO-2018 Rev. 7/03	Notice of Incomplete Reply CPA For Design Applications	This form has been revised to be applicable only to design CPAs.	LIEs should mail this form to applicants if a reply to a notice to file missing parts of a design CPA is incomplete.
PTO-2019 Rev. 7/03	Notice of Abandonment Under 37 CFR 1.53(f) (CPA) For Design Applications	This form has been revised to be applicable only to design CPAs.	LIEs should mail this form to applicants if applicants failed to provide a complete reply to a notice to file missing parts of a design CPA.
PTO-2021 Rev. 7/03	Notice to File Missing Parts of application (CPA) For Design Applications	This form has been revised to be applicable only to design CPAs.	LIEs should mail this form to applicants if a design CPA has a missing part (e.g., filing fee is missing).
PTO-2051 Rev. 7/03	Notice of Improper Request for Continued Examination (RCE)	This form has been revised to indicate that: (1) CPA practice is no longer available for utility and plant applications as of July 14, 2003; and (2) if a CPA is filed in a utility or plant application with a filing date on or after 6/8/95, the CPA is treated as an RCE if all of the RCE requirements are satisfied.	LIEs should mail this form to applicants if: (1) a CPA has been filed in a utility or plant application with a filing date on or after 6/8/95; and (2) the CPA cannot be treated as a proper RCE (e.g., the filing fee or submission is missing, or the prosecution is not closed.)
PTO/SB/29 Rev. 7/03	Continued Prosecution Application (CPA) Request Transmittal For A Design Application	This form has been revised to indicate that CPAs can only be filed in design applications.	Applicants may use this form to file a CPA in a design application.

The provisions in the Manual of Patent Examining Procedure concerning CPA practice will be revised to be consistent with this memorandum in due course.

Questions concerning this memorandum should be directed to Eugenia Jones at (703) 306-5586 and Joni Chang at (703) 308-3858, Office of Patent Legal Administration.

**Attachments:**

Notice of Improper Request for Continued Examination (RCE), PTO-2051 (Rev. 7/03)

Notice of Improper CPA (or FWC) Filing  
For Utility or Plant Applications Filed Before June 8, 1995, PTO-2011 (Rev. 7/03)

Notice of Improper CPA  
For Design Applications, PTO-2012 (Rev. 7/03)

Notice of Incomplete Reply CPA  
For Design Applications, PTO-2018 (Rev. 7/03)

Notice of Abandonment Under 37 CFR 1.53(f) (CPA)  
For Design Applications, PTO-2019 (Rev. 7/03)

Notice to File Missing Parts of application (CPA)  
For Design Applications, PTO-2021 (Rev. 7/03)